

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF THE STATE OF NEW YORK

-----X
TASHANI FRATER,

Plaintiff,

-against-

HOME DEPOT U.S.A. INC. and W.M. BARR AND
CO., INC.,

Defendants.
-----X

08-1274
Case No.

PETITION FOR
REMOVAL

BLACK, J.
AZRACK, J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 28 2008 ★
BROOKLYN OFFICE

TO: Robert F. Garnsey, Esq.
THE JACOB D. FUCHSBERG LAW FIRM, LLP.
500 Fifth Avenue
New York, NY 10110

Defendant Home Depot U.S.A., Inc, by and through its attorneys, respectfully
states:

1. The defendant Home Depot U.S.A., Inc. is named in an action filed in the New York Supreme Court, Queens County, bearing index No. 1993/08 entitled Tashani Frater v. Home Depot U.S.A., Inc. and W.M. Barr and Co., Inc.,
2. The Summons and Complaint was served upon Home Depot U.S.A., Inc. via service upon the Department of State, Division of Corporations on or about March 7, 2008.
3. According to the Complaint, plaintiff is a resident of Queens, New York.
4. Defendant Home Depot U.S.A., Inc., was, and still is a foreign corporation authorized to do business in the State of New York, with its principle offices located at 2455 Paces Ferry Road, N.W. Atlanta, Georgia 30339.

5. Upon information and belief, co-defendant is a Tennessee corporation with its primary place of business in Memphis, Tennessee.

6. This action may be removed to this Court pursuant to 28 U.S.C. Section 1332, because there is diversity of citizenship between the parties and the amount in controversy is claimed to be in excess of \$75,000.00.

7. Pursuant to 28 U.S.C., Section 1445(a), a copy of all pleadings served upon the defendant are attached hereto as Exhibit "A".

WHEREFORE, defendant requests that the action described in Paragraph "1" filed against it in the Supreme Court, State of New York, Queens County, be removed therefrom to this Court.

Dated: New York, New York
March 25, 2008

Respectfully Submitted,

DONOVAN HATEM LLP



David M. Pollack (DMP 6143)
1 Penn Plaza, Suite 3324
New York, New York 10119
(212) 244-3333
Attorneys for Defendant
Home Depot USA, Inc.

To: Robert F. Garnsey, Esq.
THE JACOB D. FUCHSBERG LAW FIRM, LLP.
500 Fifth Avenue
New York, NY 10110

W.M. Barr and Co., Inc.
2105 Channel Avenue
Memphis, TN 38113

01144738

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

TASHANI FRATER,

Plaintiff,

-against-

HOME DEPOT U.S.A., INC. and W.M. BARR
AND CO., INC.,

Defendants.

Index # 1993/08

Date Purchased: 1/24/08

SUMMONS

Plaintiff designates
Queens County as the place of trial

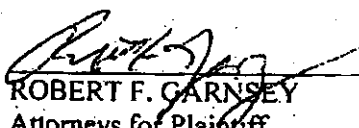
Plaintiff resides at:
118-12 155th Street
Jamaica, New York 11434

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
January 22, 2008

Yours etc.,
THE JACOB D. FUCHSBERG LAW FIRM, LLP


ROBERT F. CARNSEY
Attorneys for Plaintiff
500 Fifth Avenue
New York, NY 10110
(212) 869-3500
Our File No. 6401

2008 JAN 24 A.D. 36
QUEENS COUNTY
CLERKS OFFICE
RECEIVED

DEFENDANTS' ADDRESSES:

Home Depot U.S.A., Inc.
2455 Paces Ferry Road NW
Atlanta, GA 30339

W.M. Barr and Co., Inc.
2105 Channel Avenue
Memphis, TN 38113

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

TASHANI FRATER,

Plaintiff,

-against-

HOME DEPOT U.S.A., INC. and W.M. BARR AND
CO., INC.

Defendants.

Index No:

VERIFIED
COMPLAINT

Plaintiff TASHANI FRATER, by her attorneys, The Jacob D. Fuchsberg Law, LLP,
complaining of the defendants, upon information and belief, alleges and sets forth as follows:

FIRST CAUSE OF ACTION

1. That at all times hereinafter mentioned, plaintiff TASHANI FRATER (hereinafter "PLAINTIFF") was and is a resident of the County of Queens, State of New York.
2. That at all times hereinafter mentioned, defendant W.M. BARR AND CO., INC. (hereinafter "W.M. BARR") was and is a foreign corporation duly authorized to do business in the State of New York.
3. That at all times hereinafter mentioned, defendant W.M. BARR was duly authorized to transact business in New York and has retailers and dealers for their products in New York, within this state's jurisdiction as well as others.
4. That at all times hereinafter mentioned, defendant W.M. BARR transacted business within the State of New York, and reasonably expected its products, goods and services to be sold and distributed within the State of New York.

5. That at all times hereinafter mentioned, defendant HOME DEPOT U.S.A. INC. (hereinafter "HOME DEPOT") was and is a foreign corporation duly authorized to do business within the State of New York.

6. That at all times hereinafter mentioned, defendant HOME DEPOT was duly authorized to transact business within the State of New York, and maintains offices, retailers and dealers for the sale of their home improvement products in New York, within this state's jurisdiction as well as others.

7. That at all times hereinafter mentioned, defendant HOME DEPOT was transacting business within the State of New York.

8. That at all times hereinafter mentioned, defendant HOME DEPOT maintained a place of business within the State of New York consisting of a retail store located at 92-30 168th Street, Jamaica, New York, 11433.

9. That on and prior to August 1, 2007, defendant W.M. BARR designed a certain type of lacquer thinner, product number GML170, and known as "Klean-Strip Lacquer Thinner."

10. That on and prior to August 1, 2007, defendant W.M. BARR distributed a certain type of lacquer thinner, product number GML170, and known as "Klean-Strip Lacquer Thinner."

11. That on and prior to August 1, 2007, defendant W.M. BARR sold a certain type of lacquer thinner, product number GML170, and known as "Klean-Strip Lacquer Thinner."

12. That on and prior to August 1, 2007, defendant HOME DEPOT sold and distributed certain home improvement products and/or cleaners, including the "Klean-Strip Lacquer Thinner" product referred to herein.

13. That on and prior to August 1, 2007, defendant HOME DEPOT was a vendor and retailer of certain home improvement products and/or cleaners, including the "Klean-Strip Lacquer Thinner" product referred to herein.

14. That on and prior to August 1, 2007, defendant W.M. BARR sold and distributed the aforementioned "Klean-Strip Lacquer Thinner" to defendant HOME DEPOT.

15. That prior to August 1, 2007, defendant W.M. BARR delivered the aforementioned "Klean-Strip Lacquer Thinner" to defendant HOME DEPOT.

16. That at all times hereinafter mentioned, defendant W.M. BARR caused, allowed, and permitted the aforementioned lacquer thinner product to be sold to the general public by authorized retailers and dealers; reasonably expected its lacquer thinner products to reach the ultimate user or consumer in the condition in which it was manufactured and sold; and reasonably expected that the ultimate consumer would rely upon the reputation and quality of the lacquer thinner products manufactured, sold and distributed by said defendant.

17. That on or about September 2007, plaintiff TASHANI FRATER purchased a one-gallon can of the aforementioned "Klean-Strip Lacquer Thinner" from the defendant's HOME DEPOT retail store located at 92-30 16th Street, Jamaica, NY 11433.

18. That on or about September 22, 2007, plaintiff, while using the aforementioned lacquer thinner, was caused to sustain serious personal injuries when said lacquer thinner suddenly and without warning ignited, causing a violent explosion.

19. That the injuries sustained by plaintiff were caused solely and wholly as a result of the negligence, recklessness and carelessness of defendants, through their agents, servants, representatives and/or employees in the manufacture, design, assembly, distribution, and sale of the aforementioned lacquer thinner product: in failing to provide adequate instruction on the safe

and proper use of the lacquer thinner; in providing inadequate and unsafe directions and instructions for the use of the lacquer thinner; in providing inadequate and unsafe warnings pertaining to the use of the lacquer thinner; in failing to take those steps necessary to avoid the contingency herein; and defendants were otherwise careless, reckless and negligent.

20. That at the time the aforementioned lacquer thinner product was sold to plaintiff and left defendant HOME DEPOT's retail store, it was in the same condition as when it left W.M. BARR's manufacturing facility.

21. As a result of the occurrence, plaintiff suffered severe and permanent physical and emotional injuries, all of which are believed to be permanent in nature, as well as past and future medical expenses, pain and suffering, emotional trauma, and mental anguish.

22. Plaintiff asserts a first cause of action against defendant W.M. BARR and defendant HOME DEPOT upon the theory of negligence.

23. That as a result of the foregoing, PLAINTIFF has been damaged in an amount that exceeds the monetary jurisdictional limits of any and all lower Courts that would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

SECOND CAUSE OF ACTION

24. PLAINTIFF repeats and realleges the allegations contained in paragraphs "1" through "23" inclusive, as though each were set forth fully at length herein.

25. PLAINTIFF asserts this second cause of action against defendant W.M. BARR and defendant HOME DEPOT upon the theory of product liability premised on failure to provide safe and adequate warnings in the use of the aforementioned lacquer thinner products.

26. That as a result of the foregoing, PLAINTIFF has been damaged in an amount that exceeds the monetary jurisdictional limits of any and all lower Courts that would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

THIRD CAUSE OF ACTION

27. PLAINTIFF repeats and realleges the allegations contained in paragraphs "1" through "26" inclusive, as though each were set forth fully at length herein.

28. PLAINTIFF asserts a third cause of action against defendants W.M. BARR and HOME DEPOT upon the theory of breach of warranty.

29. That as a result of the foregoing, PLAINTIFF has been damaged in an amount that exceeds the monetary jurisdictional limits of any and all lower Courts that would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiff demands judgment against defendant W.M. BARR and defendant HOME DEPOT in an amount exceeding the jurisdictional limitations of all lower courts which would otherwise have jurisdictional herein, together with all costs, interest, and disbursements of this action.

Dated: New York, New York
January 22, 2008



Robert F. Garner, Esq.
THE JACOB D. FUCHSBERG LAW FIRM, LLP
Attorneys for Plaintiffs
500 Fifth Avenue, 45th floor
New York, NY 10110
(212) 869-3500

ATTORNEY'S VERIFICATION BY AFFIRMATION

ROBERT F. GARNSEY, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am associated with THE JACOB D. FUCHSBERG LAW FIRM, LLP attorneys of record for plaintiffs. I have read the annexed

SUMMONS & COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason I make the foregoing affirmation instead of the plaintiff is because plaintiff resides outside of the county wherein your affirmant maintains offices.

DATED: New York, New York
January 22, 2008


ROBERT F. GARNSEY, ESQ.

Our File No. 6401

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No. _____

TASHANI FRATER,

Plaintiff,

-against-

HOME DEPOT U.S.A, INC., and W.M. BARR AND CO., INC.

Defendants.

VERIFIED SUMMONS AND COMPLAINT

THE JACOB D. FUCHSBERG LAW FIRM, LLP
Attorneys for Plaintiff
Office and Post Office Address, Telephone
500 Fifth Avenue
New York, NY 10110
(212) 869-3500

To _____

Service of a copy of the
within is hereby admitted.

Dated: _____ 200__

Attorneys for _____

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

duly entered in the
the within named _____

that the within is a (certified) true copy of a
office of the clerk of
court on _____ 20__

NOTICE OF SETTLEMENT

will be presented
the within named _____

that an order of which the within is a true copy
for settlement to the HON.
one of the judges of
Court, at _____

Dated: _____

on _____ 20__ at _____ M

Yours, etc.

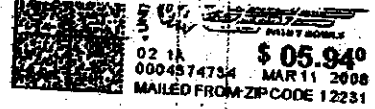
THE JACOB D. FUCHSBERG LAW FIRM, LLP

200803100495

200803100495

99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

C/O CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NY 12207-2543



Sender:

New York State Department of State
41 State Street
Albany, NY 12231

Receipt # 200803100529

COMPLETE THIS RECEIPT ON DELIVERY		
A. Signature: (<input type="checkbox"/> Addressee or <input type="checkbox"/> Agent)		
X		
B. Received By: (Please Print Clearly)		
C. Date of Delivery		
D. Addressee's Address or (Business Firm Address Used by Sender)		
Secondary Address (Suite / Apt. / Floor) (Please Print Clearly)		
Delivery Address		
City	State	ZIP + 4 Code

CERTIFIED MAIL



7111 5495 5583 1626 2856

RETURN RECEIPT REQUESTED

Article Addressed To:

HOME DEPOT U.S.A., INC.
C/O CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NY 12207-2543

RECEIVED
MAR 11 2008
ALBANY, NY 12207-2543

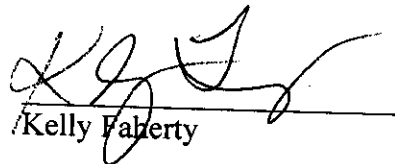


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 27, 2008, a copy of the within **PETITION FOR REMOVAL** was served upon the following counsel of record by regular mail in accordance with the Court rules:

Robert F. Garnsey, Esq.
THE JACOB D. FUCHSBERG LAW FIRM, LLP.
500 Fifth Avenue
New York, NY 10110
(212) 869-3500

W.M. Barr and Co., Inc.
2105 Channel Avenue
Memphis, TN 38113


Kelly Faherty